

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

J. Krist Schell

v.

Civil No. 06-cv-425-JM

Thomas W. Kent

O R D E R

Defendant moves to dismiss the unjust enrichment claim (Count III) in the complaint. While the motion was filed eighteen months after the deadline for motions to dismiss, it was considered and discussed at the final pretrial on December 9, 2008.

The unjust enrichment claim initially was composed of (1) an alternative cause of action to two contract claims, and (2) for appropriation of plaintiff's interests in Bradley Reed Lumber, LLC. At the final pretrial, plaintiff's counsel acknowledged that a recovery for unjust enrichment is not permitted under New Hampshire law for matters which are the subject of a contract between the parties. Plaintiff's counsel agreed that since the court had found contracts on the indemnity and on the oral agreement for return of his capital and expense loans asserted in

Counts I & II, then the unjust enrichment claim is limited to any damages related to plaintiff's losses for his interest in Bradley Reed Lumber LLC asserted in Count III.

Defendant's motion to dismiss the unjust enrichment claim (document no. 72) is granted as to that portion covered by the Count I contracts and is otherwise denied.

SO ORDERED.



James R. Muirhead
United States Magistrate Judge

Date: December 10, 2008

cc: David A. Strock, Esq.
Melinda J. Catherine, Esq.
K. William Clauson, Esq.